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COMPTROLLER GENERAL OF THE UNITED STATES  
WASHINGTON, D.C. 20548

B-159950

NOV 28 1977

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The Honorable Charles McC. Mathias, Jr.  
United States Senate

Dear Senator Mathias:

Further reference is made to your recent letter, with enclosures, on behalf of Mr. Avery L. Coleman, concerning our decision B-159950, October 19, 1966. That decision, which is published at 46 Comp. Gen. 337, holds that classified and wage board employees who work part-time schedules of less than 40 hours a week are not entitled to premium pay for work performed on Sundays. Mr. Coleman believes that the decision is unfair to part-time workers and requests that legislation be introduced to overrule it.

Subsections 405(c) and (f) of the Federal Salary and Fringe Benefits Act of 1966, Public Law 89-504, July 18, 1966, 80 Stat. 297-8, amended sections of the Federal Employees Pay Act of 1945, which are now codified at 5 U.S.C. § 5546(a) and 5 U.S.C. § 5544(a), to provide for premium pay for work performed on Sundays by general schedule and wage board employees.

Regarding the compensation of classified employees, section 405(c) provided as follows:

\*\*\* Any regularly scheduled eight-hour period of service which is not overtime work as defined in section 201 of this Act any part of which is performed within the period commencing at midnight Saturday and ending at midnight Sunday shall be compensated for the entire period of service at the rate of basic compensation of the officer or employee performing such work plus premium compensation at a rate equal to 25 per centum of his rate of basic compensation."

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Concerning premium pay for Sunday work performed by wage board employees section 405(f) provided in pertinent part as follows:

"\* \* \* That employees subject to this section whose regular work schedule includes an eight-hour period of service any part of which is within the period commencing at midnight Saturday and ending at midnight Sunday shall be paid extra compensation at the rate of 25 per centum of his hourly rate of basic compensation for each hour of work performed during that eight-hour period of service."

In our decision at 46 Comp. Gen. 337, supra, copy enclosed, in considering whether subsections 405(c) and (1) conferred the right to premium pay for Sunday work to part-time classified and wage board employees, we considered the pertinent legislative history of the Federal Salary and Fringe Benefits Act of 1966. We noted that Senate Report No. 1187, 89th Cong., 2d Sess., p. 4, stated with regard to section 405 as follows:

"Section 405 applies to classified and wage board employees a significant liberalization granted postal employees in 1965. This section requires a premium of 25 percent of base pay for any employee whose regularly scheduled 5-day workweek includes Sunday. The premium will be paid for the entire 8-hour period of service regardless of the numbers of hours which actually occur on Sunday. This is identical to the provisions for regular postal employees enacted last year."

The Senate Report regarding the premium pay provision for Sunday work for postal employees, section 5(b) of the Federal Employees Salary Act of 1965, Public Law 89-301, October 29, 1965, 79 Stat. 1115, amending 39 U.S.C. § 3573, contained the following statement: "A special premium pay of 25 percent of the hourly rate will be paid to regular

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employees whose 5-day work schedule includes an 8-hour shift any part of which occurs on Sunday." S. Rep. 910, 89th Cong., 1st Sess., p. 5.

In view of the above, we concluded that while the literal language of subsections 405(c) and (f) of Public Law 89-504 did not restrict the payment of premium pay for Sunday work to full-time employees, the legislative history supported such a restriction and we held that part-time employees were not entitled to premium pay for Sunday work.

Subsections 405(c) and (f) were codified, without any substantive changes, by Public Law 90-83, sections 1(29), 1(26), and 10(b), September 11, 1967, 81 Stat. 200-201. The statutory provisions for Sunday premium pay for general schedule and wage board employees now provide in pertinent part as follows:

**"5 U.S.C. § 5546(a)**

"(a) An employee who performs work during a regularly scheduled 8-hour period of service which is not overtime work as defined by section 5542(a) of this title a part of which is performed on Sunday is entitled to pay for the entire period of service at the rate of his basic pay, plus premium pay at a rate equal to 25 percent of his rate of basic pay."

**5 U.S.C. § 5544(a)**

"An employee subject to this subsection whose regular work schedule includes an 8-hour period of service a part of which is on Sunday is entitled to additional pay at the rate of 25 percent of his hourly rate of basic pay for each hour of work performed during that 8-hour period of service."

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Our holding in 46 Comp. Gen. 337, supra, was recently followed in a decision published at 52 Comp. Gen. 923 (1973) in which we considered the question as to whether prevailing rate employees of nonappropriated fund instrumentalities of military departments who work regularly scheduled tours of duty of less than 40 hours a week were entitled to premium pay under 5 U.S.C. § 5550 (Supp. II, 1972). We held that only such employees who have a basic full-time workweek of 40 hours were entitled to premium pay under 5 U.S.C. § 5550. In part our holding was based on the fact that part-time wage board employees are not entitled to premium pay for Sunday work under 5 U.S.C. § 5544(a) and the legislative history of 5 U.S.C. § 5550, as added by Public Law 92-392, section 10(a), August 19, 1972, 86 Stat. 575, shows that it was the intent of Congress to provide Sunday premium pay for prevailing rate nonappropriated fund employees in the same amounts and under the same conditions as such pay is authorized for other Federal prevailing rate employees.

~~With regard to entitlement to premium pay for Sunday work the Federal Personnel Manual chapter 550, subchapter 1-10c, provides in pertinent part that:~~

~~"Only full-time employees are entitled to premium pay for Sunday work."~~

In view of the above we find no basis for overruling our decision 46 Comp. Gen. 337. Therefore, we believe that part-time employees may be paid premium pay for work on Sundays only if the law is amended.

We trust that the above information will be of assistance to you. As requested by you, we are returning the enclosures submitted with your letter.

Sincerely yours,

R.F. KELLER

Deputy

Comptroller General  
of the United States

Enclosures



COMPTROLLER GENERAL OF THE UNITED STATES  
WASHINGTON, D.C. 20543

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The Honorable Marjorie S. Holt  
House of Representatives

Dear Mrs. Holt:

Further reference is made to your letter dated September 6, 1977, on behalf of your constituent, Mr. Avery L. Coleman, concerning our decision B-159950, October 19, 1966. That decision, which is published at 46 Comp. Gen. 337, holds that classified and wage board employees who work part-time schedules of less than 40 hours a week are not entitled to premium pay for work performed on Sundays. Mr. Coleman believes that the decision is unfair to part-time workers and requests that legislation be introduced to overrule it.

Subsections 405(c) and (f) of the Federal Salary and Fringe Benefits Act of 1966, Public Law 89-504, July 18, 1966, 80 Stat. 297-8, amended sections of the Federal Employees Pay Act of 1945, which are now codified at 5 U.S.C. § 5546(a) and 5 U.S.C. § 5544(a), to provide for premium pay for work performed on Sundays by general schedule and wage board employees.

Regarding the compensation of classified employees, section 405(c) provided as follows:

"\* \* \* Any regularly scheduled eight-hour period of service which is not overtime work as defined in section 201 of this Act any part of which is performed within the period commencing at midnight Saturday and ending at midnight Sunday shall be compensated for the entire period of service at the rate of basic compensation of the officer or employee performing such work plus premium compensation at a rate equal to 25 per centum of his rate of basic compensation."

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Concerning premium pay for Sunday work performed by wage board employees section 405(f) provided in pertinent part as follows:

"\* \* \* That employees subject to this section whose regular work schedule includes an eight-hour period of service any part of which is within the period commencing at midnight Saturday and ending at midnight Sunday shall be paid extra compensation at the rate of 25 per centum of his hourly rate of basic compensation for each hour of work performed during that eight-hour period of service."

In our decision at 46 Comp. Gen. 337, supra, copy enclosed, in considering whether subsections 405(c) and (f) conferred the right to premium pay for Sunday work to part-time classified and wage board employees, we considered the pertinent legislative history of the Federal Salary and Fringe Benefits Act of 1966. We noted that Senate Report No. 1187, 89th Cong., 2d Sess., p. 4, stated with regard to section 405 as follows:

"Section 405 applies to classified and wage board employees a significant liberalization granted postal employees in 1965. This section requires a premium of 25 percent of base pay for any employee whose regularly scheduled 5-day workweek includes Sunday. The premium will be paid for the entire 8-hour period of service regardless of the numbers of hours which actually occur on Sunday. This is identical to the provisions for regular postal employees enacted last year."

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In view of the above, we concluded that while the literal language of subsections 405(c) and (f) of Public Law 89-504 did not restrict the payment of premium pay for Sunday work to full-time employees, the legislative history supported such a restriction and we held that part-time employees were not entitled to premium pay for Sunday work.

Subsections 405(c) and (f) were codified, without any substantive changes, by Public Law 90-83, sections 1(29), 1(26), and 10(b), September 11, 1967, 81 Stat. 200-201. The statutory provisions for Sunday premium pay for general schedule and wage board employees now provide in pertinent part as follows:

**\*5 U.S.C. § 5546(a)**

"(a) An employee who performs work during a regularly scheduled 8-hour period of service which is not overtime work as defined by section 5542(a) of this title a part of which is performed on Sunday is entitled to pay for the entire period of service at the rate of his basic pay, plus premium pay at a rate equal to 25 percent of his rate of basic pay."

**5 U.S.C. § 5544(a)**

"An employee subject to this subsection whose regular work schedule includes an 8-hour period of service a part of which is on Sunday is entitled to additional pay at the rate of 25 percent of his hourly rate of basic pay for each hour of work performed during that 8-hour period of service."

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With regard to entitlement to premium pay for Sunday work the Federal Personnel Manual chapter 550, subchapter 1-10c, provides in pertinent part that:

"Only full-time employees are entitled to premium pay for Sunday work."

In view of the above we find no basis for overruling our decision 46 Comp. Gen. 337. Therefore, we believe that part-time employees may be paid premium pay for work on Sundays only if the law is amended.

We trust that the above information will be of assistance to you.

Sincerely yours,

R.F. KELLER

Deputy  
Comptroller General  
of the United States

Enclosure